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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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## School Property Tax Control Board Meeting Minutes July 8, 2005

A special meeting of the School Property Tax Control Board was held on Friday, July 8, 2005. The meeting was held in the Indiana Government Center North, Room N1045, 100 North Senate Avenue, Indianapolis, IN 46204. Present for the meeting was Patty Bond, Carlyn Johnson, Chuck Nemeth, Ken Barnes, Kurt Barrow and Teresa Hemmerle, Administrative Officer.

**Crawfordsville Community Schools, Montgomery County:** Officials requested approval of a correction of error for an assessed value error for 2003 payable 2004.

**Present for the hearing** was Dr. Kelly Steele, Superintendent; Paul Pfledderer, Business Manager; Dale Petrie, School Board President and Rex Henthorn, School Attorney.

**Comments:** The School Attorney explained the situation. He noted the materials submitted for review by control board members is not a typical request seen by the control board. This is due to the fact that the matter is still pending before the Indiana State Tax Court. Officials are not requesting for emergency financial relief or for a levy greater than what was already approved. They are requesting that the 2004 levy that was approved be billed for in 2005. Crawfordsville Schools had a levy approved for 2003 payable in 2004 of approximately \$10,872,000 for all funds. The levy was based on an assessed value that was \$75 million more than the actual assessed value in the school district. The correct assessed value was not known by the school corporation until August 25, 2004 due to delays of reassessment. The tax rates were first advertised by county officials on October 13 and 24, 2004. An error in the assessed value of the school district was determined and discussed between county and school officials on October 27, 2004. The problem was a math error in Union Township. This error would cause a \$1.213 million reduction in the levy that had been approved by the DLGF. School officials filed an appeal of the error on October 29, 2004 with the DLGF. At the time, school officials had extreme concerns that no funds had been received in 2004 for property taxes from the County Treasurer. The tax duplicate was not corrected by the County Auditor and officials billed on the erroneous assessed value. This led to the failure to bill for and otherwise collect the \$1.213 million in levy. The total approved levy for 2004 was \$10,872,637. This led to a failure to bill of \$442,320 in the General fund, \$477,720 in the Debt Service fund, \$180,960 in the Capital Projects fund, \$66,600 in the Transportation fund, and \$30,960 in the Bus Replacement fund. In addition to the failure to collect taxes, there was a shortfall of \$493,934 of taxes billed and not collected. This means \$1.69 million less in revenue than was approved to be collected. In summary, they received 87% of the levy approved with 11% of the levy not even being billed. School officials requested the appeal only two days after finding out the problem existed, but the appeal was not forwarded to the control board for review. There was no action by the County

Auditor to correct the abstract even with a written request for such action by the school corporation. Despite repeated pleas by officials to the DLGF, they were advised that there would be no hearing held to review this matter or would it be deferred to the control board. This occurred on February 14, 2005. The school sued the DLGF, the County Auditor and the County Treasurer in the State Tax Court on February 25, 2005. The State Tax Court ordered the DLGF to hold a hearing on the school appeal and to forward this to the control board for review. The School Attorney felt it was within the power of the control board to recommend a higher levy to correct the error. He referenced IC 6-1.1-36-10 which allows taxes uncollectible because of erroneous proceeding to be collected in the following year, which would be 2005. There are several reasons this solution would be best for the school and taxpayers as well. The failure to send out revised notices reduced the Debt Service levy and payments had to be made from an already short General fund. The Bus Replacement fund ended in the black at the end of 2004 only because a bus that had been ordered was not delivered until January 2, 2005 upon request to the vendor. He submitted a list of cash balances of all their funds since 1988. It showed the Debt Service was in the red at the end of 2004 and the Bus Replacement fund would have been had the delivery of the bus not been delayed. The district has many Hispanic students and teachers were included in the 2004 budget to address their needs. There are programs that have been reduced or eliminated, such as art and music. There was no summer school offered this year. The school is short around \$250,000 in the Capital Projects fund. Officials patched a roof rather than replacing it and technology has not been replaced like it should be. These expenditures did not occur to save on cash flow. The teacher contract was negotiated based on the approved budget and levy. This has to be honored since it was a negotiated collective bargaining agreement and adversely affects the weakened General fund. The school had planned to replace two buses each year but could not due to the decreased levy. The DLGF has allowed the payment of property insurance and utilities from the Capital Projects fund, but that could not be covered with the reduced levy. If the 2004 levy is delayed for collection until 2006, the increased tax levies of other units in the district due to building projects will also cause an increase in taxes. Officials feel it can be spread out more evenly and compassionately if levied and collected in 2005. The calculation of future years using the statutory formula would be wrong using the incorrect 2004 tax rate. The cash balances will only carry them so far and officials are concerned about depleting them. The County Auditor and Treasurer had earlier stated the willingness to correct the pay 2004 billing, but did not proceed any further to make the correction. County officials said the DLGF would have to approve the revised tax rates along with the supplemental tax notices. County officials felt they could not do what school officials asked from them because the DLGF would not approve it. School officials request the control board to use section 4.4 which authorizes them to look at the rates that were set. He said they should increase the 2004 tax rate to allow for the levy that was approved in all funds to be collected in 2005. The School Attorney submitted a report that showed the calculation of the unbilled levy and shortfall in collections.

The Business Manager continued the discussion. He apologized that they were here making this request and this situation should not have gone this far. This is an assessor problem and the County Auditor should have asked for help from the DLGF. He feels they would not be here today if the County Auditor had sought assistance. An error on the assessed value that caused tax rates to be calculated too high was corrected the year before and taxpayers received refunds. He understands the Capital Projects fund rate cap would be adjusted with a new assessed value

and would probably reduce the Capital Projects fund. He is more concerned with the loss in the General fund of over \$400,000. The Debt Service fund is in the red, but thinks the DLGF could do something about that fund. This appeal is not a matter of financial relief since they had cash balance available to fund their budget. They are going into 2006 with a lot less money than they should have had because of this problem. Many taxpayers in Crawfordsville are aware that the 2004 bills were not correct.

Mr. Barnes continued the discussion. He made a legislative proposal based on the actions of another school in 1989 that created section 4.7. Among those changes was clarification that a shortfall appeal would not make you a controlled school. The normal levy is the most the DLGF should approve, which would cover operational costs and money for cash flow. A unit should not have more money than needed for a specific purpose. A maximum levy is a statutory limit on the normal levy. The approval by the DLGF should be the lower of the maximum levy or the normal levy. All the way to this point the levy is based on an estimated assessed value. The abstract of levies and rates with the real assessed value actually billed determines the final rate and levy charged. The taxes received would be the levy charged and may have errors in it, such as post abstract adjustments and would have a certificate of error for it. There might be penalties and prior year payments carried forward. There could also be refunds granted to taxpayers from a filed certificate of error and could also contain non-payments. He believes a shortfall is the difference between the levy produced on the abstract and the levy certified by the DLGF and not the difference between the certified levy and the taxes received. A school would not know if a shortfall occurred until the end of the year when they receive the final distribution. There should also be some time to investigate the reason behind the shortfall. It is also considered a proper remedy to get a loan to be repaid the following year. That is the only applicable remedy by statute in his opinion, because if you only have a normal levy you do not have excess funds. The shortfall applies to operating funds such as the General and Transportation funds. The loan would be from a bank, another fund or perhaps from the State. A future levy would then repay the loan. On a shortfall appeal, the December 31 date is for the year you determine if a shortfall occurred. The appeal should not be approved until they have published notice of the taxes that were going to be charged. He feels the remedy for this case is if the school adopted their maximum levy and the DLGF approved it, then the amount allowed should be the difference between the levy certified and abstract levy charged for the General and Transportation funds. He feels they can appeal anytime before December 31 and the remedy is to approve a loan. He said they used to do a loan repayable from the General fund because the money that was not collected would have been paid 20% by the State. He said this sounds harsh, but taxpayers paid an artificially lower tax rate and were not billed for taxes that should have been levied. He continued if the school did not adopt their maximum levy, then that much would come off the top for the General fund. The Special Education Pre-School fund is a fixed rate and the school would not be entitled to that shortfall. The Bus Replacement fund could delay the purchase or receipt of a bus to the future since there is no levy control on that fund or proceed with the school bus loan procedures. The Capital Projects fund should have no relief granted if they were at their maximum tax rate. The Debt Service fund could have the levy increased to meet their obligations. He feels unless they pursue the Emergency Financial Relief appeal and file before September 20, the control board should recommend approval of a loan to recapture the shortfall in the General and Transportation funds to be repaid in 2006. He feels there would be no

problems doing this since the 2006 levy has not been set yet and any anticipated problems with the 2005 tax receipts could be addressed in 2006 as well.

Ms. Bond asked if the school was at their maximum levy and the Business Manager said he thought they were.

Ms. Johnson asked if school officials really would like the county to send out another bill and if this would be possible and school officials replied yes. The School Attorney referred to footnote 14 of the Tax Court decision that basically states that the law is written in such a fashion that there needs to be a finding that the DLGF reduced the General fund levy because of the maximum levy to qualify for the relief that Mr. Barnes suggests. The School Attorney referred to IC 17-15 which states a political subdivision may appeal to the DLGF for an increase in its tax levy as fixed by the county board of adjustment or County Auditor. To initiate the appeal, the political subdivision must file with the DLGF not later than ten days after the publication of the notice required in section 12. He said school officials did file the appeal in a timely manner. It goes on to say the legislative body of the political subdivision must also adopt a resolution and they did this as well. The resolution must be attached to the statement of objections and must be signed by the proper officers and that was done. They objected timely and they did it last fall saying that the rates were incorrect and should be corrected immediately. He understands what Mr. Barnes proposed as a solution, but feels the Indiana Tax Court would not agree with the remedy since there was no reduction to the General fund levy by the DLGF.

The Business Manager noted a correction to the tax rate due to an assessed value error was made in the prior year and feels a precedence has been established.

Mr. Barrow asked if the county has billed and collected the taxes for 2003 pay 2004. The School Attorney referred to the information he had submitted to control board members with the budget and collections information. He noted as of October 2004 had been operating mainly through tax anticipation warrants.

Ms. Bond asked if the 2003 pay 2004 taxes were paid in one installment and the School Attorney said yes at the end of November. Ms. Bond asked about the status of the 2004 pay 2005 tax bills. The School Attorney said they have billed and collected on the first installment, which was due June 20, 2005. The second installment is due on November 10 as usual.

Mr. Barnes said he disagreed with the interpretation of the School Attorney on footnote 14 of the Indiana Tax Court decision. Mr. Barnes felt Judge Fisher was saying that because the DLGF did not reduce the levy was not a good reason for the DLGF to deny the petition. He said the school could file for the shortfall appeal. The School Attorney said that is where they disagree and feels the shortfall should be recovered by rebilling the 2005 property taxes. He feels this is a fairness issue for the school corporation. Ms. Bond said the school will always be affected in the calculation of state support due to the erroneous tax rate as long as they fund based on rate driven and compare to the previous year. Mr. Barnes said the tax rate was too low and would cause the State to pay more.

The Business Manager said assuming the unbilled portion was added back to the 2006 levy, they would still have to wait until June 2006 to collect. The Business Manager said he has never seen in the Indiana Code the limitation to appeal the shortfall in the General and Transportation funds only. Mr. Barnes explained they already have the authority to make it up in the Debt Service fund. They also have the authority to make it up in the Bus Replacement fund since it is not rate or levy limited. Mr. Barnes explained the school should never have received it in the Capital Projects or Pre-School funds.

Ms. Johnson asked if this was also a problem for other municipal corporations in Montgomery County and if so, what have they done. The School Attorney said they also filed appeals, but they have abandoned them. Only the school filed the appeal with the Indiana Tax Court within 45 days of the DLGF budget order. The County unit was out about \$400,000 and the City of Crawfordsville was short \$250,000. They understand what they are asking for will require additional work, but fairness justifies the work. The delay in reassessment caused this problem to be discovered so late and limited the school to two days to file their appeal. Ms. Johnson asked if school officials wanted a supplemental tax bill to be sent out for 2005. The School Attorney said they feel that would be most fair to taxpayers with all the other capital projects that will begin repayment in 2006, including a new library. There is already an outcry as to what the property taxes will be in 2006. Ms. Johnson asked if school officials handled it through a loan as Mr. Barnes suggested, would this increase the levy in 2006. The School Attorney said they would still have to pay an increased amount to recover the shortage. The Business Manager explained the fluctuations in the tax bills because of the assessment errors wreak havoc on mortgage payments and escrow accounts of taxpayers with mortgages.

Mr. Barnes said he felt this request was asking the DLGF to mask the errors of local officials. He did not think an increase of 10% in property taxes for one year was unreasonable. The Business Manager said the increase would skew the effect of the school property tax rate to the total tax rate. Taxpayers would not understand in Crawfordsville what was going on with the other taxing units. He said his point is an error was corrected the year before after billing due to an assessed value being too low and tax rates too high. He said taxpayers were issued refunds and nothing was ever said. He asked what statutory situation gave them the authority to do that.

Mr. Barrow asked if county officials had billed before the correction for pay 2003. The Business Manager said some taxpayers had already paid their bill when the correction was made. The School Attorney said corrected bill was sent out and refunds made on overpayments. He noted the county officials had indicated a willingness to correct the error and do like they did before, but said it was up to the DLGF to approve it. School officials are just requesting what had been done in the prior year.

Ms. Bond asked if county officials made a request to the DLGF to change the assessed values that were submitted. The School Attorney did not know for sure.

Mr. Barnes said he can understand why officials were quick to revise the tax rates when taxpayers were being overcharged.

The School Attorney said they did file a timely appeal when the tax rates were published and would rather this have been heard at that time.

Mr. Barrow asked if school officials have compared the cost of a loan versus rebilling. The School Attorney said county officials said they got a quote of being able to do this to create a duplicate for \$10,000 to \$20,000. They had researched enough to determine that cost. The cost of borrowing is rate driven and would be difficult to determine. The problem is they have been issuing tax warrants at the beginning of the year for the last couple of years, so this limits them borrowing in the open market. Mr. Nemeth said this loan would be outside the maximum anticipation loan amount.

Ms. Bond said she does not feel the control board should help cover up the problem. She understands the school corporation was not at fault. The short term borrowing costs money and they probably are limited in borrowing from other funds. Talk of re-billing is never well received at the state government level due to time and costs.

Ms. Johnson felt the County Auditor was willing to rebill this year.

Mr. Barnes said that \$500,000 not much to cause a revised billing and disruption of the system. He feels there is a clear path to how to address this issue. He was not sure the county could handle the task to issue another tax bill.

**Motion:** Mr. Barnes made a motion to approve a loan in the amount of the difference between the approved DLGF levy and the abstract levy for the General and Transportation funds for taxes payable in 2004 and to be repaid over two years. Mr. Nemeth seconded the motion which favorably carried 5-0.